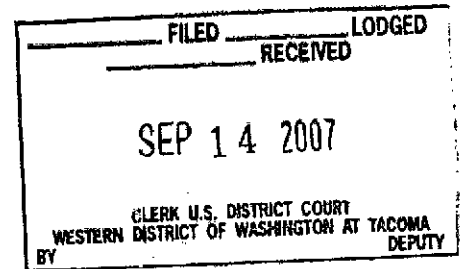


Honorable Ronald B. Leighton



07-CV-00716-ORD



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON, AT TACOMA

AMERICAN FAST FREIGHT, INC., and
HAWAIIAN OCEAN TRANSPORT, INC.,

NO. 2:07-cv-0716 RBL

Plaintiffs,

STIPULATED PROTECTIVE ORDER

v.

NATIONAL CONSOLIDATION &
DISTRIBUTION, INC., a New Jersey
corporation; NEW CONCEPT
DISTRIBUTION, INC., a Nevada corporation;
NCD GLOBAL, INC., a New Jersey
Corporation; NCD COMPANIES, INC., a
corporation,

Defendants.

This matter came before the Court on the Stipulation of counsel for the parties for the entry of an Order governing the disclosure and handling of documents that either party considers to constitute trade secret, proprietary, or confidential business information.

In order to preserve and maintain the confidentiality of certain documents to be produced in this action, it is hereby stipulated that:

1. The parties have a mutual interest in the orderly and prompt production of discovery, and each side has discussed with the other their respective concerns about the

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08555186

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1 propriety of designating trade secret or confidential business information. Having weighed the
2 issues related to having a court decide the propriety of a confidential designation, the following
3 compromise has been reached and is set forth below.

4 2. Documents to be produced in this litigation that contain confidential trade secret
5 or proprietary business information shall hereafter be referred to as "Protected Documents."
6 When used in this Order, the word "documents" means all written material, videotapes, and all
7 other tangible items, whether produced as hard copy, computer diskette, CD-ROM, or
8 otherwise. Except as otherwise indicated below, documents designated by the producing party
9 to any other party to this litigation and/or the party's attorneys, consultants, agents, or experts
10 in this litigation as Protected Documents shall be given confidential treatment as described
11 below. The producing party will visibly mark all Protected Documents "Subject to Protective
Order" or "Confidential."

12 3. The producing party has the burden of proving that a Protected Document
13 contains trade secrets or other confidential business or technical information should another
14 party or a non-party seek to disclose the document or its contents outside the parameters of this
15 order. Prior to designating any material as a Protected Document "Subject to Protective Order"
16 or "Confidential," the producing party will make a bona fide determination that material is, in
17 fact, a trade secret or other confidential business or technical information, the dissemination of
18 which could damage the producing party's competitive position. If any other party to this
19 litigation disagrees with the "Subject to Protective Order" or "Confidential" designation of any
20 document, the party shall notify the producing party in writing. The producing party will
21 timely apply to this Court to set a hearing for the purpose of establishing that said document
22 contains trade secrets or is otherwise confidential or proprietary. Any document marked as
23

1 "Subject to Protective Order" or "Confidential" will continue to be treated as a protected
2 document pending termination by the Court as to its confidential or proprietary status.

3 4. Both the Protected Documents and the information contained therein shall be
4 treated as confidential. Except upon the prior written consent of the producing party or upon
5 order of this Court, the Protected Documents and the information contained therein may be
6 shown, disseminated, or disclosed only to the following persons:

7 (a) Counsel of record for each party in this lawsuit, including other
8 members of counsels' law firms and any other counsel of record associated to assist in the
9 preparation or trial of this case;

10 (b) Employees of counsel of record who assist in the preparation of trial of
11 this case;

12 (c) Experts and non-attorney consultants retained by the parties to this
13 litigation for the preparation of trial of this case, provided that no disclosure shall be made to
14 any expert or consultant who is employed by a competitor of the producing party and provided
15 that disclosure of Protected Documents to such experts and consultants will be in hard copy
16 format only and will not be in any digitized or other computer readable format;

17 (d) Any party to this litigation; and

18 (e) Any mediator(s) retained by the parties to assist with the potential
19 settlement of this lawsuit.

20 5. Before receiving access to any of the Protected Documents or the information
21 contained therein, each person described in paragraph 4(c) above shall be advised of the terms
22 of this Order, shall be given a copy of this Order, and shall agree in writing, in the form
23 attached hereto as "Exhibit A," to be bound by its terms and to submit to the jurisdiction of
24 this Court. Counsel for the parties will retain the signed "Exhibit A" forms and keep a list of

1 all persons who have received Protected Documents for inspection by the Court and, on order
2 of the Court, counsel for the producing party.

3 6. If documents marked "Subject to Protective Order" or "Confidential" are to be
4 disclosed to the Court as attachments to any motion or declaration, or otherwise, such
5 documents must be filed under seal.

6 7. To the extent the Protected Documents or information contained therein are
7 used in the taking of depositions, such documents or information shall remain subject to the
8 provisions of this Protective Order, along with the transcript pages of the deposition testimony
9 dealing with the Protected Documents or information. Any court reporter or transcriber who
10 reports or transcribes testimony in this action shall agree that all Protected Documents or
11 information designated under this Order shall remain confidential and shall not be disclosed by
12 them, except pursuant to the terms of this Order, and that any notes or transcriptions of such
13 testimony (and any accompanying exhibits) will be retained by the reporter under the terms of
14 this Protective Order or delivered to counsel of record.

15 8. Protected Documents may be shown to a fact witness testifying in this case
16 during the course of the witness's deposition. The fact witness shall be subject to the
17 jurisdiction of this Court and subject to the terms of this Order regardless of whether such
18 witness signs the Affidavit appended hereto as Exhibit A. Counsel for the party taking the
19 deposition shall so advise such witness on the record and shall deliver a copy of this Order to
20 the witness prior to showing the witness any Protected Documents.

21 9. This Protective Order shall not apply to the disclosure of Protected Documents
22 or the information contained therein at the time of trial, through the receipt of Protected
23 Documents into evidence or through the testimony of witnesses. The closure of trial
24 proceedings and sealing of the record of a trial involve considerations not presently before the
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1 Court. These issues may be taken up as a separate matter upon the motion of any of the parties
2 at the threshold of or during trial.

3 10. Inadvertent or unintentional production of documents containing information
4 that should have been marked "Subject to Protective Order" or "Confidential" shall not be
5 deemed a waiver in whole or in part of the producing party's claims of protection or
6 confidentiality.

7 11. No party, nor that party's counsel or experts or any other person retained by the
8 party to assist in the preparation of this action shall under any circumstances sell or offer to
9 sell, advertise, or publicize the contents of Protected Documents or the fact that the party has
10 obtained confidential or proprietary information from the producing party.

11 12. This Order may not be waived, modified, abandoned, or terminated, in whole or
12 in part, except by an instrument in writing signed by the parties. If any provision of this Order
13 shall be held invalid for any reason whatsoever, the remaining provisions shall not be affected
14 thereby.

15 13. This Order shall be binding upon the parties hereto, upon their attorneys, and
16 upon the parties' and their attorneys' successors, executors, personal representatives,
17 administrators, heirs, legal representatives, assigns, subsidiaries, divisions, employees, agents,
18 independent contractors, or other persons or organizations over which they have control and
19 shall remain binding after the termination of this litigation.

20 14. Counsel shall be required to return the Protected Documents to counsel for the
21 producing party after the conclusion of this case.

22 15. The Court retains jurisdiction over the parties and recipients of the Protected
23 Documents for the enforcement of the provisions of this Order following termination of this
24 litigation.

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1 DATED: this 14th day of September 2007.

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4 Honorable Ronald B. Leighton
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1 AGREED AND APPROVED BY:

2 EISENHOWER & CARLSON, PLLC
3 Attorneys for Plaintiffs

4 By: John R. Ruhl
5 John R. Ruhl, WSBA 8558

MILLS MEYERS SWARTLING
Attorneys for Defendants

6 By: [Signature] 34378 for
7 Stephanie Camp Denton, WSBA 21920

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24 STIPULATED PROTECTIVE ORDER - 7
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EXHIBIT A

AFFIDAVIT OF _____, being duly sworn and personally appearing before the undersigned attesting officer, duly authorized by law to administer oaths, deposes and says that the within statements are true and correct:

1.

I HAVE READ THE STIPULATED PROTECTIVE ORDER ATTACHED HERETO AND I UNDERSTAND ITS TERMS.

2.

I agree that my signature below submits me to the jurisdiction of the United States District Court for the Western District of Washington, , in which the action of *American Fast Freight, Inc., et al., v. National Consolidation & Distribution, Inc., et al.*, No. C 07 0716 RBL, is pending, and binds me to the provisions of the foregoing Stipulated Protective Order, including all promises undertaken in the Order, as if originally agreed by me.

FURTHER AFFIANT SAYETH NOT.

Signed: _____

Sworn and subscribed to before me this _____ day of _____, 2007.

Residing at: _____

My Commission Expires: _____

[notary signature]

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